THE NATIONAL DRUG CONTROL AUTHORITY BILL, 2011

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Clause

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SCHEDULE
THE NATIONAL DRUG CONTROL AUTHORITY BILL, 2011

A Bill for

AN ACT of Parliament to establish an institutional framework for the control of drug and chemical substances abuse and for the formulation and implementation of policy thereto and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Drug Control Authority Act, 2011 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. In this Act, unless the context otherwise requires—

“Authority” means the National Drug Control Authority established by section 4;

“Board” means the Board of Directors of the Authority established by section 6;

“chemical substance” means matters bearing composition or characteristics that predispose them, under certain conditions, to react and produce effects upon human life or safety, which may be positive or negative;

“Chief Executive Officer” means the chief executive officer of the Authority appointed under section 10;

“child” has the meaning assigned to it in the Children Act and “children” shall be construed accordingly;

“demand reduction” means any policies and strategies aimed at decreasing the need for drugs;

“drug” means any substance capable of altering the mind, body behaviour or character of any individual and
includes both lawful drugs or narcotic drugs and psychotropic substances;

“Minister” means the Minister for the time being responsible for matters relating to narcotic drugs and psychotropic substances;

“narcotic drug” has the meaning assigned to it in the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994;

“premises” includes land, building, vehicle or vessel on or offshore movable or removable or other place in which may be used for the storage, manufacture, concealment, sale, handling, transport, or other related purposes;

“psychotropic substance” has the meaning assigned to it in the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994; and

“supply reduction” means any policies and strategies aimed at streamlining the production and trade in drugs.

3. Where the provisions of this Act are inconsistent with the provisions of any other written law, the provisions of this Act shall prevail.

PART II—THE NATIONAL DRUG CONTROL AUTHORITY

4. (1) There is established an Authority known as the National Drug Control Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property in and out of Kenya;

(c) borrowing or receiving grants; and
(d) doing or causing to be done or performing all such other things or acts for the proper performance of its functions under this Act, as may be lawfully done or performed by a body corporate.

(3) The Authority shall be the successor to the National Campaign Against Drug Abuse Authority established under the State Corporations Act existing immediately before the commencement of this Act.

5. The Authority shall be responsible for—

(a) facilitating expression of public concerns, dissemination of information and participation in public education relating to drug abuse;

(b) ensuring that promotion of any harmful or addictive drug and chemical substances of abuse amongst children is curbed;

(c) spearheading, co-ordination and monitoring of drug control and anti-narcotic initiatives to facilitate drug demand reduction and drug supply reduction and chemical substances abuse control;

(d) facilitating the liaison, co-operation and coordinated working of all ministries, agencies and persons charged with the responsibility of enforcing drug and substances of abuse laws;

(e) receiving and referring to the relevant institutions for investigation and necessary action any complaint or allegation of the production, trafficking, consumption or concealment of drugs or chemical substances of abuse;

(f) ensuring that private sector and volunteer organizations dealing with drugs and chemical substances of abuse, which are responsible for the distribution chain, become responsible for the entire chain with no diversions;
(g) facilitating and promoting the tracing of proceeds and assets acquired through drug trafficking and advocating for forfeiture;

(h) liaising with and supporting law enforcement agencies in the enforcement of legislation against production of narcotic drugs or psychotropic substances, trafficking and abuse, extradition of suspects; training; assets forfeiture; diversion of precursor chemicals; or other related matters;

(i) ensuring and supporting the relevant bodies, organs or departments of government in developing strategies for the surveillance of emerging patterns of abuse, new precursors, new reagents, new solvents, new drugs and their variants as well as emerging modes of production, importation, trafficking, distribution and concealment thereof;

(j) developing and maintaining proactive cooperation with international institutions in areas relevant to achieving the Authority’s objectives;

(k) monitoring trends in the control of drugs abuse at national, regional and international levels;

(l) facilitating the development of treatment and rehabilitation centers and social re-integration programmes, and subsequent management of abstinence;

(m) facilitating and ensuring the formulation of national policies and plans of action on drugs and chemical substances of abuse control for the relevant bodies, organs or department of Government;

(n) facilitating the relevant bodies, organs or departments of Government to develop and implement comprehensive and integrated demand reduction and supply reduction programmes;
ensuring that the policies and strategies to curb drugs and chemical substances abuse are continually reviewed and implemented;

facilitating the development of plans, strategies, guidelines and standards of managing drugs, psychotropic and chemical substances dependence;

proposing effective legislative, regulatory and administrative measures for drug demand reduction and drug supply reduction;

advising Government ministries, departments and other agencies on matters within its mandate;

researching, collecting, collating, analyzing, disseminating relevant data and statistic on drugs and psychotropic substance abuse and serving as the repository of such data;

facilitating capacity building for the agencies involved in the fight against drug abuse;

preparing, publishing and submitting a drug and chemical substance of abuse status report bi-annually to the National Assembly through the Minister.

6. (1) The management of the Authority shall vest in a Board of Directors, appointed by the President with the approval by the National Assembly.

(2) The Board shall consist of—

(a) a chairperson, who shall be a person with experience in public affairs either in judicial service, public service or the private or voluntary sector;

(b) the Permanent Secretary for the time being responsible for matters relating to narcotic drugs and psychotropic substances or his representative;
(c) the Permanent Secretary for the time being responsible for matters relating for public health or his representative;

(d) seven persons appointed from among healthcare providers, researchers, policy and legal practitioners, media and communication professionals, educationists, security, safety and environment experts, faith based leaders, civil society, associations and public and foreign service professionals, provided that no more than one person shall be appointed from one category;

(e) the Chief Executive Officer who shall an ex-officio member and secretary to the Board.

(2) No person shall be appointed under subsection (1)(a) and (d) unless such person-

(a) is of impeccable character and high moral standing in relation to drugs and chemical substances of abuse;

(b) has the capacity to inspire and achieve the objectives of the Authority.

7. (1) The conduct and regulation of the business and affairs of the Board shall be as set out in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

8. (1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act.

(2) Without prejudice to the generality of the foregoing, the Board shall have power to—

(a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;

(d) open such banking accounts for the funds of the Authority as may be necessary;

(e) invest any funds of the Authority not immediately required for its purposes in the manner provided in section 18;

(f) undertake any activity necessary for the fulfillment of any of the functions of the Authority under this Act.

9. The Authority shall pay members of the Board such remuneration, fees or allowances as it may determine in consultation with the Minister for the time being responsible for matters relating to finance.

10. (1) There shall be Chief Executive Officer of the Authority who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person—

(a) is a holder of a degree from a recognized university;

(b) has at least five years post graduate working experience in a relevant area.

(3) The Chief Executive Officer shall—

(a) be the secretary to the Board; and

(b) subject to the directions of the Board, be responsible for the day to day management of the affairs and staff of the Authority
11. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

12. The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the performance of any of the functions or duties of the Authority under this Act or under any other written law.

13. (1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Authority when affixed to a document and duly authenticated shall be judicially noticed and unless the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

PART III—FINANCIAL PROVISIONS

14 (1) The funds of the Authority shall comprise of –

(a) such sums as may be granted to the Authority by the Minister pursuant to subsection (2);  

(b) such fees, monies or assets as may accrue to or vest in the Authority in the course of the exercise
of its powers or the performance of its functions under this Act or under any written law; and

(c) all monies from any other source provided for or donated or lent to the Authority.

(2) There shall be made to the Authority, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

(3) Unless Treasury otherwise directs, the balance of the funds of the Authority at the end of the financial year shall be retained for the purposes for which the Authority is established.

15. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

16. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Authority for the financial year and in particular, the estimates shall provide for –

(a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;

(c) the proper maintenance of the buildings and grounds of the Authority;

(d) the maintenance, repair and replacement of the equipment and other property of the Authority and

(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement.
benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister’s approval, the Board shall not increase the annual estimates of the Authority without the consent of the Minister.

17. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Authority.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Authority together with-

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

18. The Board may invest any of the funds of the Authority in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART IV—ENFORCEMENT PROVISIONS

19. (1) The Minister shall, upon recommendation by the Authority, appoint any person or class of persons to be authorised officers for purposes of this Act.

(2) The Minister shall issue a certificate of appointment to every person appointed under this section.
(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—

(a) public health officers appointed under the Public Health Act;

(b) any other person upon whom any written law vests functions of the maintenance of law and order.

(4) An authorised officer appointed under subsection (1) shall—

(a) be subject to the general directions of the Authority;

(b) submit periodic reports to the Authority in such manner as may be prescribed on the status of compliance with of the provisions of this Act.

20. (1) For the purposes of ensuring compliance with the Narcotic and Psychotropic Substances Act, 1994 or any law relating to drugs, an authorised officer may, at any reasonable time, enter any place or premises which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of that law.

(2) An authorised officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 19(2).

(3) In carrying out an inspection in any place pursuant to this section, an authorised officer may—

(a) examine any goods, building, works or thing;

(b) require any person in such place to produce for inspection, in the manner and form requested by the office any goods, works, drawings, plans, approvals or thing;

(c) conduct any test or analysis or take any measurements of samples of the thing; or
(d) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant.

(4) An authorised officer who has analyzed a thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination.

(5) An authorised officer may not enter a premises except with the consent of the occupant or under the authority of a warrant issued under section 21.

21. (1) Upon an ex-parte application, a magistrate or judge of the High Court, may issue a warrant authorising the authorised officer named in the warrant to enter and inspect a premises, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

(a) the premises is a place referred to in section 20;

(b) entry to the premises is necessary for the administration or enforcement of this Act or other written law relation to drug abuse;

(c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(2) An authorised officer executing the warrant issued under this section shall not use force unless such officer is accompanied by a police officer and the use of force is specifically authorised in the warrant.

22. (1) During an inspection under this Act, an authorised officer may seize any thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act or the other written law has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The authorised officer may direct that the thing seized be kept or stored in the place where it was seized or that it be removed to another place.
(3) Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any thing seized.

(4) Any person from whom a thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the Minister within the prescribed time and in the prescribed manner.

(5) The High Court may order that the thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that-

(a) the applicant is entitled to possession of the thing seized; and

(b) the thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

23. (1) Offences under this Act shall be cognizable offences.

(2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.
24. (1) No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

PART V—MISCELLANEOUS PROVISIONS

25. (1) Information held by the Authority or any other public or private body on drugs and psychotropic substances of abuse shall be open for scrutiny and disclosure for public information purposes.

(2) Any person who breaches the provisions of this section commits an offence.

26. Any person who commits any offence under this Act for which the penalty is not provided shall be liable upon conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding twelve years or both.

27. (1) The Minister may, on recommendation of the Authority, make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

(a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;

(b) prescribe the methods to be used in testing drugs;

(c) prescribe the information that manufacturers shall provide to the Authority including information on drugs, sales and advertising data, and information on product composition, ingredients, hazardous properties and brand elements.
28 (1) In this section—

“appointed day” means the day upon which this Act comes into operation;

“former Authority” means the National Campaign Against Drug Abuse Authority established under the State Corporations Act.

(2) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the former Authority, shall by virtue of this paragraph, vest in the Authority.

(3) On the appointed day, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the former shall, by virtue of this paragraph, be deemed to be vested in, imposed on or enforceable against the Authority.

(4) Any reference in any written law or in any document or instrument to the former Authority shall on and after the appointed day, be construed to be a reference to the Authority.

(5) The annual estimates of the former Authority for the financial year in which the appointed day occurs shall be deemed to be annual estimates of the Authority for the remainder of that financial year;

Provided that such estimates may be varied by the Board in such manner as the Minister may approve.

(6) The administrative directions made by former Authority or by the Minister which are in force immediately before the appointed day shall, on and after such day, have force as if they were directions made by the Board or the Minister under this Act.
SCHEDULE

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The Chairperson or a member of the Board other than the ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

2. (1) A member other than an ex-officio member may—

(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister on recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;

(iv) is otherwise unable or unfit to discharge his functions.

3. (1) The Board shall, at its first meeting, elect a Vice-Chairperson from amongst the persons appointed under section 6(2)(d) of the Act.

(2) The person elected under subparagraph (1) shall not be of the same gender as the chairperson of the Board.

(3) The Board shall meet not less than four times in
every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(4) Notwithstanding subparagraph (3), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(5) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days’ written notice of every meeting of the Board shall be given to every member of the Board.

(6) The quorum for the conduct of the business of the Board shall be half of the total members including the Chairperson or the person presiding.

(7) The Chairperson or in his absence, the Vice-Chairperson, shall preside at every meeting of the Board but the members present shall elect one of their number to preside whenever the Chairperson and Vice-Chairperson are absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(8) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(9) Subject to subparagraph (6), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(10) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.
4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.
MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to make legal provisions for the coordination of hitherto unconverted efforts to manage drug and chemical substances and other related abuse addictions in society.

The Bill proposes to set up the National Drug Control Authority as the successor to the National Campaign Against Drug Abuse Authority (NACADAA) so as to give it more statutory recognition and power to superintend over organizations, bodies and departments empowered by various statutes to deal with drugs and chemical substances and ensure the applicable laws and legal sanctions are enforced. In this way, the Authority will be able to facilitate compliance and ensure there is a coordination of the implementing agencies of government in the control and elimination of drug and chemical substance abuse.

**Part I** of the Bill deals with preliminary matters

**Part II** of the Bill provides for the establishment of an autonomous Authority, which shall be the superintending body. This Part sets out the functions and powers of the Authority, which will ensure that persons and departments charged with the responsibility of ensuring controls, are enforced. The function of the Authority include reporting bi-annually to the National Assembly and, by extension, to the Kenyan public on the measures taken, the information available on trends, drug use etc, and the challenges faced and proposed solutions. The management of the Authority is vested in the Board, which will consist of eminent persons with a commitment against drug and chemical substance abuse. This Part also provides for the appointment of the Secretary who shall be responsible for the day-to-day running of the Authority on behalf of the Board.

**Part III** of the Bill provide for the financial management of the Authority. It is proposed that the Authority takes over from the NACADAA. NACADAA is a state corporation established under the State Corporations Act and its establishing instrument already imposes a charge on the Consolidated Fund. The creation of the new Authority will therefore not impose any additional requirements on the Exchequer but will merely transit those already imposed by NACADAA.

**Part IV** of the Bill provides the enforcement mechanisms of the Authority, to ensure compliance with the provisions of the proposed Act. The authorised officers appointed under the proposed Act shall have the power to enter premises, private or public or government departments to
confirm compliance and application of regulations or laws promulgated for the purpose of controlling or otherwise dealing with drug and chemical substance abuse, manufacture and trafficking of drugs, and connected purposes.

Part V of the Bill makes provision for Miscellaneous matters including the making of regulations and the penalties that may be imposed in instances of breach that are not covered under the Act.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 24th March, 2011.

AMINA ABDALLA,
Member of Parliament.